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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/030,287	07/22/2002	CLAUDIO TORGHELE	946999.00002-5	9000

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EXAMINER

COOLEY, CHARLES E

ART UNIT

PAPER NUMBER

1723

DATE MAILED: 02/11/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/030,287	TORGHELE ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Charles E. Cooley	1723	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is FINAL.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 13-39 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 29-38 is/are allowed.
- 6) ☒ Claim(s) 13,14,23,26-28 and 39 is/are rejected.
- 7) ☒ Claim(s) 15-22,24 and 25 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 22 July 2002 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |  |
|--|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)            |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>06042002; 05302003.</u> | 6) <input type="checkbox"/> Other: ____  |

## **DETAILED ACTION**

### ***Information Disclosure Statement***

1. The information disclosure statement (IDS) submitted on 4 JUN 2002 and 30 May 2003 have been considered by the examiner. Note the attached PTO-1449 forms.

### ***Specification***

2. The lengthy specification has not been checked to the extent necessary to determine the presence of all possible minor errors. Applicant's cooperation is requested in correcting any errors of which applicant may become aware in the specification.
3. The disclosure is objected to because of the following informalities: The specification should have the following headings inserted:

The following guidelines illustrate the preferred layout for the specification of a utility application.

### **Arrangement of the Specification**

As provided in 37 CFR 1.77(b), the specification of a utility application should include the following sections in order. Each of the lettered items should appear in upper case, without underlining or bold type, as a section heading:

- (a) TITLE OF THE INVENTION.
- (b) CROSS-REFERENCE TO RELATED APPLICATIONS.
- (c) STATEMENT REGARDING FEDERALLY SPONSORED RESEARCH OR DEVELOPMENT.
- (d) INCORPORATION-BY-REFERENCE OF MATERIAL SUBMITTED ON A COMPACT DISC (See 37 CFR 1.52(e)(5) and MPEP 608.05. Computer program listings (37 CFR 1.96(c)), "Sequence Listings" (37 CFR 1.821(c)), and tables having more than 50 pages of text are permitted to be submitted on compact discs.) or  
REFERENCE TO A "MICROFICHE APPENDIX" (See MPEP § 608.05(a). "Microfiche Appendices" were accepted by the Office until March 1, 2001.)

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(e) BACKGROUND OF THE INVENTION.

(1) Field of the Invention.

(2) Description of Related Art including information disclosed under 37 CFR 1.97 and 1.98.

(f) BRIEF SUMMARY OF THE INVENTION.

(g) BRIEF DESCRIPTION OF THE SEVERAL VIEWS OF THE DRAWING(S).

(h) DETAILED DESCRIPTION OF THE INVENTION.

(i) CLAIM OR CLAIMS (commencing on a separate sheet).

(j) ABSTRACT OF THE DISCLOSURE (commencing on a separate sheet).

(k) SEQUENCE LISTING (See MPEP § 2424 and 37 CFR 1.821-1.825. A "Sequence Listing" is required on paper if the application discloses a nucleotide or amino acid sequence as defined in 37 CFR 1.821(a) and if the required "Sequence Listing" is not submitted as an electronic document on compact disc).

Appropriate correction is required.

4. The abstract and title are acceptable.

***Claim Rejections - 35 USC § 112***

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

6. Claim 28 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 28: the recitations of "the metering device" lack antecedent basis. The scope of the claim terms "a known metering device" and "a known kneading device" is indeterminate rendering the scope of the claim indefinite.

***Claim Rejections - 35 USC § 102***

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

8. Claims 13-14 are rejected under 35 U.S.C. 102(b) as being anticipated by Tanaka et al. (US 5,322,368).

The patent to Tanaka et al. discloses a dough mixer comprising a closed housing 2 with circular surfaces (Fig. 2); upper and lower regions of the housing being flat and being formed by surfaces of sliding blades 24 and 30; kneading element 4; and a cross piece 8.

9. Claim 39 is rejected under 35 U.S.C. 102(b) as being anticipated by Oches (US 1,700,510).

The patent to Oches discloses a dough mixer for the production of dough, comprising means 6, 32 for charging a mixing region 17 with flour-like or dust-like ingredients; means 8 for homogenizing and aerating the flour-like or dust-like ingredients; means 11 for introducing liquid ingredients to the flour-like or dust-like ingredients; means 39 for preparing the dough; and means 27, 28 for discharging the dough from the mixing region.

***Claim Rejections - 35 USC § 103***

10. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

11. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

12. Claims 23, 26, 27, and 28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tanaka et al. (US 5,322,368) in view of Hayashi et al. (US 5,158,782).

The patent to Tanaka et al. discloses the dough mixer having a material feeding inlet 20 for feeding the dough material (col. 3, lines 6-8) but does not disclose the recited metering device. The patent to Hayashi et al. discloses a dough mixer 20 which is fed by the recited metering unit 14 (Figures 1-4) including a cylindrical container 11 with a vertical longitudinal axis, the cylindrical container including a dust storage area 10a in an upper region; a metering mechanism 14, 15 in a lower region; at least one

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dust stirring element 17a operating in the upper region; at least one metering stirring element 16a operating in the lower region; a distribution cone 17 in the lower region; a metering disk 15 with a plurality of metering holes 15a equally spaced from one another, and equally spaced from a rotational axis of the metering disk, the metering holes 15a being located along a rim of the metering disk 15; and a shaft 18a that rotates coaxially with the vertical longitudinal axis of the cylindrical container to activate the dust stirring elements, the metering stirring elements, the distribution cone, and the metering disk to provide pre-determined portions of dust to the dough mixer; wherein the metering disk 15 is positioned between a fixed, level bottom plate (proximate 13a) of the cylindrical container and an annular fixed sieve 12, and the bottom plate includes an outflow opening 13a within the track of the metering holes 15a of the rotating metering disk 15; the sieve 12 includes ducts 12a through which the dust passes and wherein at least one metering stirring element 17a, extending radially from the distribution cone 17, passes close to the sieve during rotation of the cone 17; wherein the dough mixer and the metering device can function independently of each other as each is driven by separate drive means. In view of the suggestion in Tanaka et al. that dough material is fed by some means into the material feeding inlet 20 thereof, it would have been obvious to one having ordinary skill in the art, at the time applicant's invention was made, to have provided the dough mixer of Tanaka et al. with a metering unit as disclosed by Hayashi et al. for the purpose of feeding the mixer with the required quantity of materials and to decrease the variation of feed quantity due to differences between types of materials being fed (col. 2, lines 11-21 and col. 6, lines 16-26).

***Allowable Subject Matter***

13. Claims 29-38 are allowed.
14. Claims 15, 16, 17, 18, 19, 20, 21, 22, 24, and 25 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Conclusion***

15. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The cited prior art discloses dough forming machines and metering devices.
16. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Charles E. Cooley whose telephone number is (571) 272-1139. The examiner can normally be reached on Mon-Fri.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wanda Walker can be reached on (571) 272-1151. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.



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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in cursive script, appearing to read "Charles E. Cooley", followed by a long horizontal flourish.

Charles E. Cooley  
Primary Examiner  
Art Unit 1723

5 February 2004